

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

RUBY HERNANDEZ,

Plaintiff,

V.

HOME DEPOT U.S.A., INC.,

Defendant.

[illegible]

Civil Action No. 4:22-cv-696

**DEFENDANT HOME DEPOT U.S.A., INC.’S
NOTICE OF REMOVAL AND BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant **HOME DEPOT U.S.A., INC.** (“Defendant” or “The Home Depot”), and files this Notice of Removal under 28 U.S.C. § 1332 and Brief in Support:

I. STATEMENT OF GROUNDS OF REMOVAL

1. On July 1, 2022, Plaintiff filed this lawsuit in the 431st Judicial District of Denton County, Texas as Cause No. 22-5326-431, styled “*Ruby Hernandez v. Home Depot U.S.A., Inc.*”

A true and correct copy of the Original Petition is attached as Exhibit "A-2"

2. Plaintiff sued The Home Depot alleging negligence arising out of a workplace injury suffered during the course and scope of her employment.

3. Defendant was served on July 12, 2022. Defendant files this removal within 30 days after service and receipt of the Original Petition, as required by 28 U.S.C. § 1446(b)(1).

Prior to removal, The Home Depot filed its Answer on August 4, 2022, in the state court action, a true and correct copy of which is attached hereto as Exhibit “A-5.”

4. The state court action is one over which this court has original jurisdiction under the provisions of 28 U.S.C. § 1332 and may be removed to this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties. 28 U.S.C. § 1332(a); *Johnson v. Columbia Props. Anchorage, L.P.*, 437 F.3d 894, 899-900 (9th Cir. 2006). Additionally, the amount in controversy exceeds \$75,000, excluding interests and costs. 28 U.S.C. § 1332(a); *Andrews v. E.I. du Pont de Nemours & Co.*, 447 F.3d 510, 514-15 (7th Cir. 2006).

5. Defendant denies Plaintiff’s claims.

6. As required by 28 U.S.C. § 1446(a), true and correct copies of the following documents are being filed with this Notice of Removal and are incorporated herein at length:

<u>Exhibit:</u>	<u>Description of Exhibit:</u>
Exhibit “A”	Index of Pleadings;
Exhibit “A-1”	State Court Docket Sheet;
Exhibit “A-2”	Plaintiff’s Original Petition;
Exhibit “A-3”	Citation;
Exhibit “A-4”	Return of Service for Defendant;
Exhibit “A-5”	Defendant’s Original Answer;
Exhibit “A-6”	Notice of Filing of Notice of Removal (to be filed after this Notice of Removal is filed);
Exhibit “B”	Fed. R. Civ. P. 7.1 Disclosure Statement and Local Rule CV-81 Notice

II.
DIVERSITY OF CITIZENSHIP

7. Plaintiff is an individual residing in and a citizen of the State of Texas. Ex. “A-2,” ¶ 3.

8. Defendant is a foreign corporation organized under the laws of Delaware and has its principal place of business in Fulton County, Georgia. Accordingly, Defendant has, at all relevant times, been a citizen of Delaware and Georgia.

9. Plaintiff is a citizen of Texas; The Home Depot is a citizen of Delaware and Georgia. Thus, at both the time of filing of the original action in state court and at the time of the filing of this removal, complete diversity of citizenship existed among the parties. Removal is proper. 28 U.S.C. § 1332(a).

III.
AMOUNT IN CONTROVERSY

10. Defendant would show the Court has diversity jurisdiction over this matter as there is complete diversity of citizenship between the parties and the monetary relief sought by Plaintiff exceeds the minimum jurisdictional amount of \$75,000.

11. Plaintiff alleges in her Original Petition that she seeks “monetary relief of over \$250,000 but not more than \$1,000,000.” Ex. “A-2,” ¶ 1.

12. Plaintiff is seeking damages for past and future physical pain, past and future mental anguish, past and future physical impairment, medical and healthcare expenses incurred in the past and future, lost wages in the past, loss of earning capacity incurred in the past, loss of earning capacity that in reasonably probability will be incurred in the future, loss of fringe benefits, loss of household services, and past and future disfigurement. *Id.* at ¶ 10.

IV.
PROCEDURAL REQUIREMENTS FOR REMOVAL

13. Pursuant to 28 U.S.C. §§ 1441 and 1446, this Notice of Removal is timely as it is being filed no more than thirty (30) days after service.

14. The United States District Court for the Eastern District of Texas encompasses Denton County, the county in which the state court proceeding is now pending. Therefore, venue in this Court is proper pursuant to 28 U.S.C. § 1441(a).

15. There are no other proper defendants to this action that would destroy diversity.

16. In accordance with 28 U.S.C. § 1446(a), filed herewith as Exhibits “A-1” through “A-5” are copies of all process and pleadings from the state court proceedings.

17. Promptly after notice of this removal is filed, written notice hereof will be given to Plaintiff, and a copy of this Notice of Removal will be filed with the Clerk of the Court for the 431st Judicial District of Denton County, Texas, to effect the removal of the civil action to this Honorable Court as provided by law. The Notice of Filing of Notice of Removal to be filed in the State Court Proceeding is attached hereto as Exhibit “A-6.”

18. The Home Depot specifically reserves the right to amend or supplement this Notice of Removal.

19. By virtue of this removal, Defendant does not waive its rights to assert any jurisdictional defenses or other defenses or motions, including motions pursuant to Rules 9 and 12 of the Federal Rules of Civil Procedure.

V.
JURY DEMAND

20. Plaintiff demanded a jury in the state court action.

WHEREFORE, PREMISES CONSIDERED, Defendant HOME DEPOT U.S.A., INC. prays the Court remove the case styled “*Ruby Hernandez v. Home Depot U.S.A., Inc.*” bearing Cause No. 22-5326-431, pending in the 431st Judicial District in Denton County, Texas to the United States District Court for the Eastern District of Texas, Sherman Division, and for such other and further relief to which it is entitled at law or in equity.

Respectfully submitted,

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_____/s/ Chad L. Farrar
By: Chad L. Farrar

Attorneys for Defendant Home Depot U.S.A., Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 11th day of August 2022, a true and correct copy of the foregoing was served by email and ECF addressed to:

Via ECF & email

T. Dean Malone
Law Offices of Dean Malone, P.C.
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dean@deanmalone.com

_____/s/ Chad L. Farrar
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